

**BEST AVAILABLE COPY**

Appl. No. 09/448,378  
Amdt. dated January 12, 2005  
RCE filed January 12, 2005

### 3. Remarks

Claims 6, 7, 20 and 22-53 are currently pending in the application with claims 6 and 20 being in independent form. Claims 1-5, 8-19 and 21 have been previously cancelled without prejudice. Claims 54-56 have been withdrawn as being drawn to a non-elected invention. Claims 7, 25, 26, 34, and 35 have been amended. Claim 7 has been amended to limit the claim to GM-CSF to reflect Applicants' species election. Claims 27, 29, 36, and 38 have been canceled at Applicants' discretion.

#### 1. 35 U.S.C. §112, first paragraph

Claims 25, 26, 34, and 35 have been amended to (a) delete reference to mouse sequences, (b) delete reference to polypeptide variants defined by hybridization conditions for polynucleotides encoding the polypeptides, and (c) to add the requirement that the variant polypeptides retain the capacity to bind flt3. Thus, the written description requirement as defined in The Guidelines for the Examination of Patent Applications has been met. The genus shares the common structural characteristic of binding flt3 and this characteristic is a direct link between the structure of the variant Flt3-L polypeptides and their function. As such, Applicants respectfully submit the claims meet all written description requirements and the rejection under 35 U.S.C. §112, first paragraph may be withdrawn.

#### 2. 35 U.S.C. §103(a)

Claims 6, 7, 20 and 22-53 stand rejected as being unpatentable under 35 U.S.C. §103(a)/§102(e) over Lyman, et al. (WO 94/28391) in view of Elliott, et al. (USPN 5,478,556), Srivastava, et al. (USPN 6,017,544) and Brem, et al. (USPN 5,626,862). Applicants respectfully traverse.

A CPA was filed under 37 CFR §1.53(d) on June 28, 2001, which entitles the present application to enjoy the benefit of revised 35 USC §103(c). This provision precludes the use of commonly owned subject matter as prior art under §103(a)/§102(e) (see, MPEP 706.02(l)(1) at 700-50). In support of Applicants' claim of common ownership between the present application and Lyman, et al. (WO 94/28391), a Statement by Applicants' representative of record is included with this response (see, MPEP 706.02(l)(2)(II) at 700-53, *et seq.*). Because the primary reference has been disqualified, the rejection under §103(a)/§102(e) may be properly removed.

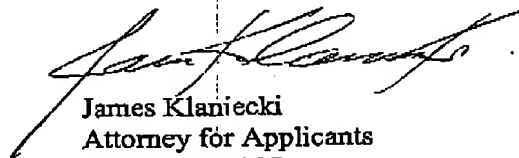
Applicants note that the main independent generic claims (claims 6 and 20) are free from the cited art and are ostensibly allowable. Therefore, any claims dependent therefrom, are also deemed allowable (see, MPEP 806.04(d) at 700-41).

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Applicants kindly request allowance of the pending claims as amended. If the Examiner believes that any issues could be addressed by way of a telephone conference, the Examiner is cordially invited to telephone the undersigned.

Respectfully submitted,



James Klaniecki  
Attorney for Applicants  
Reg. No. 38,207

Immunex Corporation  
Law Department  
1201 Amgen Court West  
Seattle, WA 98119-3105  
Telephone (206) 265-7000

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below.

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Nanci M. Kertson

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